

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th Day of May 1998

BEFORE

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT PETITION NO.1305/1992

BETWEEN:

N.G. Raman,
s/o late Nagaraj Iyer,
aged about 69 years,
r/a. No.105,
III Cross, Gandhinagar,
Bangalore-9.

...PETITIONER

(By Sri. K. Suryanarayana Rao, Adv.)

AND:

1. The General Insurance Corporation
of India,
IV Floor, Industrial Assurance
Building, Church Gate,
Bombay-400 020,
rep. by its Chairman and
Managing Director.

2. The National Insurance
Company Ltd.,
No3, Middleton Street,
Calcutta-700 071,
by its Chairman-cum-
Managing Director.

...RESPONDENTS

(By Sri. M. Sowri Raju, Adv.)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, with a prayer to quash the order dt. 8-11-91 of the General Manager-cum-Managing Director of National Insurance Company Ltd., Calcutta respectively dismissing him from the service of the second respondent as per Annexure-K.

This Writ Petition coming on for hearing this day, the Court made the following:-



O R D E R

This is second round of litigation, the petitioner has challenged the order of dismissal at Annexure-K dated 8-11-91 dismissing the petitioner from service with effect from earlier date 18-3-82.

2. Mr. Suryanarayana Rao, learned counsel for the petitioner submits that initiation of the enquiry proceedings in pursuance of the order passed by this Court in W.P.18944/82 disposed of on 29th October 1990, even after the petitioner was retired from services with effect from 31-10-83 is totally impermissible under the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 and law laid down ^{by this Court & the Apex Court in that regard} and therefore, the conduct of continuing the de novo enquiry and passing an order of dismissal against the petitioner which is impugned in this writ petition is totally without jurisdiction and

without authority of law, hence learned counsel submits that the impugned order is liable to be quashed.

3. Further, the second ground of attack of the impugned order is that the order of dismissal is dated 8th November 1991 in dismissing the petitioner from his service with effect from the earlier date 18-3-82 retrospectively, which is totally impermissible in law. The misconducts alleged against the petitioner vide at Annexure-B has not been proved, even as per the findings of the enquiry officer on issue No.5, while answering the said issue, the enquiry officer has held that the petitioner has committed an act of mis-conduct, which finding is perverse, the Disciplinary Authority without application of mind to the facts of the case and evidence on record has accepted the perverse findings of the enquiry officer and passed the order of dismissal which is impugned in the writ petition and hence, the petitioner has prayed for quashing the same.



4. Learned counsel Sri. M. Sowri Raju appearing on behalf of the respondents vehemently submits that the first ground regarding Authority of the disciplinary Authority in continuing the Disiplinary proceedings ^{de novo} against the petitioner cannot be re-agitated in this petition as there was a direction to the Respondent-Corporation in the earlier judgment of this Court in the writ petition referred to above to continue the enquiry proceedings and to conclude the same within six months from the date of that Judgment. Therefore, it is not open for the petitioner to contend in these proceedings that the continuation of ^{the} de-novo enquiry against the petitioner is totally impermissible in law. Learned counsel appearing for the respondents elaborating his submission, submits that as per the directions given by this Court in the earlier



writ petition proceedings, the disciplinary authority has conducted the enquiry and concluded the same. Therefore, the action of the respondent is legal and valid. He would further submit that the regulations of the Company confers power upon the respondents to pass an order of dismissal against its employee with retrospective effect. With regard to the findings of the enquiry officer, he placed strong reliance on the enquiry report contending that the enquiry officer has taken into consideration the material evidence on record and he has assigned valid and cogent reasons in his report holding that the acts of misconduct levelled against the petitioner are proved. Therefore, he submits that in exercise of extra-ordinary and supervisory jurisdiction and power under Articles 226 and 227 of the Constitution of India, shall not be invoked by this Court ~~in~~ this case as the impugned order

challenged by the petitioner is legal and valid.

5. Having heard the learned counsel appearing for the petitioner and respondents on the basis of submissions made by them I have perused the writ petition averments and documents produced by the petitioner and I have answered the legal points raised by the parties as hereunder.

6. It is an undisputed fact that as on 31-3-83, the petitioner service was terminated by attaining the age of superannuation. It is also ^{an} undisputed fact that this Court has not considered legal aspect as to whether the disciplinary Authority could have continued with the de-novo enquiry against the petitioner, when there is no provision under the Regulations of the Company to the effect that it could continue enquiry proceedings against a retired employee.

7. Learned counsel appearing for the

petitioner Mr. Suryanarayana Rao placed strong reliance in support of his submission, an unreported judgment rendered ^{by the Division bench of this Court} in M. MADEGOWDA v. THE KARNATAKA SILK INDUSTRIES CORPORATION AND ANOTHER in W.A.8090/96 D.D. on 16-7-1997 the very same question was raised in the said writ Appeal and that was considered by this Court and laid down the law as hereunder:-

"The learned counsel appearing for the appellant has submitted that the learned Single Judge after holding that the order of the disciplinary authority being liable to be set aside was not justified in remanding the case to the disciplinary authority for fresh disposal in accordance with law. It is submitted that as the appellant has mean while superannuated, there did not exist relationship of employer and employee between the parties. The Supreme Court in STATE OF PUNJAB v. KHEMI RAM (AIR 1970 SC 214) held that, no disciplinary action could be taken against a government servant after his retirement. It was further

held that if disciplinary action was required to be taken against a government servant it must be dealt before he retires. If disciplinary inquiry could not be concluded before the date of retirement, the course open to the Government was to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such inquiry was completed and final order was passed thereon."

8) This Court has laid down the law in the case of G.K. THIRUNARAYANA IYENGAR v. STATE OF KARNATAKA reported in ILR 1991 KAR 4070, after considering number of authorities of the Apex, the relevant portion of Paragraph '9' of the Judgment reads thus:-

"Coming to the first submission urged on behalf of the petitioner, it is by now well settled that the disciplinary control which an employer or master exercises over his employee or servant is incidental to the subsisting employer-employee or master-servant relationship,

as the case may be, if that relationship ceases to exist the employer or the master also loses his power of disciplinary control. As early as in the year 1937 the Privy Council in R.T. RANGACHARI v. SECRETARY OF STATE observed:

"It seems to require no demonstration that an order purporting to remove the appellant from the service at a time when, as their Lordships hold, he had for some months duly and properly ceased to be in the service, was a mere nullity and cannot be sustained." →

The general principle is well settled and it was so stated by the Supreme Court in STATE OF ASSAM v. PADMA RAM and more recently reiterated in C.L.VARMA v. STATE OF MADHYA PRADESH AND ANOTHER. It must, therefore, be held that the employer has no right to deal with its ex-employee in its disciplinary jurisdiction after the employee has superannuated. Authorities are legion,

and it is not necessary to multiply Authorities in view of the authoritative pronouncements by the Supreme Court. The High Courts have also consistently laid down the same principle."

3. Learned counsel for the petitioner in support of his submission placed strong reliance on the definition ^{of Regulation clause} 2(g) of the Regulation of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, which reads thus:-

"2(g) - 'Employee' means any employee of the Corporation and/or its subsidiaries other than the casual, work charged or contingent staff."

By relying upon the said Clause of the definition, he submits that the order of dismissal is unsustainable in law for the reason that as on the date of passing the order, the petitioner was no longer an employee and the relationship Employer and Employee was ceased. Therefore, exercise of power by the first respondent invoking the regulations referred to above is ^{bad} _{in law.}

No doubt in the earlier writ petition proceedings, the question regarding as to whether the Disciplinary Authority could proceed further to conduct de-novo enquiry against the employee even after he attains the age of

superannuation was not considered with reference and this Court. In view of the law declared by the Apex ~~to law laid down by the Apex Court and Division~~ Court

Bench of this Court and another judgment of this Court referred to above continuing enquiry proceedings against the petitioner who had retired is totally without jurisdiction and authority of law. Therefore, the ground urged by the learned counsel for the petitioner that the impugned order of dismissal dismissing the petitioner from service from 18-3-82 is bad in law, is tenable in law and must be accepted.

But the submission of the learned counsel for the respondent is not tenable in law, in view of the law declared by the Apex Court and this Court, hence the submission of the respondent's counsel ~~is rejected~~. Can not be accepted as the same are untenable in law.

10. In addition to the above reasons the impugned order of dismissal is also bad for another reason that the misconduct alleged against the petitioner is not proved. I was taken to the findings of the enquiry officer. Issue No.5 framed by the enquiry officer is relevant for the purpose ^u ~~of~~ ^u considering the contention urged by the learned counsel for the petitioner in this regard, which reads thus:- "It is not established during the course of the enquiry, to whom the amount of Rs.4,161/- (cash) was given. This question remains unanswered."

11. Learned counsel appearing for the petitioner vehemently submits that it has been unanswered ^u ~~in~~ the issue No.5 and further there is categorical finding of fact ^{recorded u} ~~by~~ the Enquiry Officer that it is established that the cash of Rs.4,161/- of the Company has been dishonestly, fraudulently mis-appropriated.

Sri. N.G. Raman has contributed to this act. In the last paragraph of the report, the enquiry officer has held that from the enquiry proceedings as well as from factual depositions of the management witnesses, and facts conveyed during the enquiry, it is established that Sri. N.G. Raman has involved and contributed to the dishonest, fraudulent and mis-appropriation acts in the withdrawal of Rs.4,161/- (cash). Therefore, he submits that findings of the Enquiry Officer are contrary to the conclusions^m arrived at by him on Issue No.5 and the reasons recorded by the Enquiry Officer on that issue in his enquiry report are not tenable in law ^m

12. Having gone through the relevant portion of the Enquiry Report extracted in this Judgment, as referred to in the preceding paragraph, I am of the view that the Enquiry Officer has answered the Issue No.5 in favour of the petitioner, thereby



the charge pertaining to the alleged misappropriation of Rs.4,161/- against the petitioner is not proved is a finding of fact recorded in favour of the petitioner, therefore, the enquiry officer was not correct in holding that charge against the petitioner was proved in his operative portion of the Report. Therefore, this Court holds that the report is perverse, as the findings and conclusions of the enquiry officer are inconsistent and contradictory with each other. This important aspect of the case has not been considered by the Disciplinary Authority, while exercising his power and passing the impugned order, therefore, the impugned order is liable to be quashed.

13. For the reasons stated supra, the petitioner is entitled for the relief sought for by him in this writ petition.

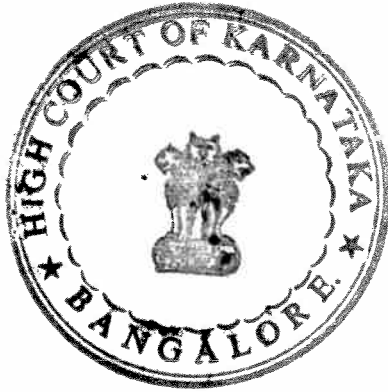
Accordingly, writ petition is allowed. Rule is made absolute. The impugned order at Annexure-K



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is hereby quashed.

No Costs.



Sd/-
JUDGE

GB/-

bnv/-